

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JIMMY CASTILLO,

Plaintiff,

vs.

CIVIL NO. 01-626 LFG/WWD

CITY OF ALBUQUERQUE et al.,

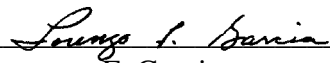
Defendants.

MEMORANDUM AND ORDER
DENYING MOTION FOR PARTIAL
SUMMARY JUDGMENT NO. IV

THIS MATTER is before the Court on Defendant Officer Andrew Lehocky's ("Officer Lehocky") Motion for Partial Summary Judgment No. IV: Dismissal of Plaintiff's Fourth Amendment Claim that the Use of a Police Service Dog to Bite a Suspect Constitutes the Use of Deadly Force [Doc. 89]. Officer Lehocky seeks a Court determination of whether his use of a police service dog to bite Plaintiff, Jimmy Castillo ("Castillo"), constituted the use of deadly force. Officer Lehocky seeks a Court determination is whether the claim should be analyzed under Tennessee v. Garner, 471 U.S. 1, 105 S. Ct. 1694 (1985), or as an excessive force claim under Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865 (1989).

In response to the motion, Castillo notes that his complaint raises a claim for excessive use of police force, but "makes no reference whatsoever to the use of deadly force or characterizes the use of Defendant Lehocky's police service dog as deadly force." Further, Castillo argues that Lehocky is seeking to dismiss a claim which has not been made. The Court agrees.

Castillo's response clearly indicates that he is not asserting, nor will he present, a claim that Officer Lehocky's use of his police service dog, Bart, constituted the use of deadly force. Since that claim is not being made, there is no need to seek its dismissal. Accordingly, the Court denies Lehocky's motion for partial summary judgment.



Lorenzo F. Garcia
United States Magistrate Judge